IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 592 OF 1995

The State of Maharashtra ...Appellant.

Versus

1. Ashwin Burabhai Patel,

2. Mavji Jeevraj Patel,

3. Gyanchand Swami Gupta,

All R/o. Gyanchand Swami Gupta, Room No.8, Tribhuvandas Chawl, Daruwala Compound, S.V. Road, Malad (West), Mumbai 64. ...Respondents.

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Shri. A.S. Shitole, A.P.P. for Appellant.

Shri. N.B. Shah, Adv. for respondents.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 9TH DECEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. the State of Maharashtra challenges the judgment and order dated 15.12.1994 passed by the learned Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai in C.C. No. 367/S/89. By

the said judgment and order the learned Magistrate acquitted the respondents i.e.original accused Nos. 1 to 3 of the offence under Section 2(ia)(m) r.w. 7(i)(iii) r.w. 16(a) and 17 of the Prevention of Food Adulteration Act, 1954 r.w. Rule 50 of Food Adulteration Rules, 1955.

2. The brief facts of the case are as under:-

. The shop owned by the respondent No.3 is situated at Room No.8, Tribhuvandas Chawl, Daruwala Compound, S.V. Road, Malad (W), Bombay-64. The respondent No.1 is the vendor, respondent No.2 is the conductor and respondent No.3 is the proprietor of the said shop. The complainant P.W.2 Food Inspector Shri. Prakash Halmanyar on 22.1.86 at about 4.00 p.m. visited the shop of the respondents and drew a sample of Ground Nut Oil of 450 gms and divided it into three equal parts for analysis under panchanama Exh.P-28. The necessary procedure of sealing and labelling was done in accordance with the rules and laws. The panch witness at the said time was P.W.4 Shri. P.D. Navle. The complainant received the report of the Public Analysis that the sample was found to be adulterated hence, he obtained sanction for prosecution against the respondents from the Joint Commissioner. Thereafter, P.W.2 Shri. Halmanyar

filed his complaint against the respondents. He also complied with other remaining legal formalities.

3. The particulars of the accusation under Sections 2(ia)(m) r.w. 7(i)(iii) r.w. 16(a) and 17 of the Prevention of Food Adulteration Act, 1954 r.w. Rule 50 of Food Adulteration Rules, 1955 was explained to the respondents. All of them pleaded not guilty and claimed to be tried.

. Four witnesses have been examined by the prosecution. P.W.1 Shripad Ravindra Chitnis, Clerk from the local authority, the complainant P.W.2 Shri. Prakash Halmanyar is the Food Inspector, P.W.3 Shri. P.S. Joshi is the Public Analyst and P.W.4 Shri. P.D. Navle is the panch witness. On going through the evidence adduced by the prosecution the learned Magistrate acquitted the respondents i.e. accused Nos. 1 to 3 of the offences charged. Hence, this appeal.

4. I have heard Shri. Shitole, the learned A.P.P. for the appellant-State and Shri. Shah, the learned advocate for the respondents. I have also perused the entire material pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal

deserves to be dismissed.

5. As far as the point of drawing of sample of Ground Nut Oil and preparation of the panchnama of the said fact is concerned, the complainant as well as the panch witness P.W.2 Prakash Halmanyar and P.W.4 Shri. Navle have deposed on this aspect. Nothing has been elicited in their cross examination so as to disbelieve them on the aspect of drawing of sample and preparation of panchanama. The evidence on record is also sufficient to hold that the complainant P.W.2 Prakash Halmanyar is a qualified Food Inspector.

6. However, Rule 16(A) states that:

> "The stopper shall first be securely fastened so as to prevent leakage of the contents in transit."

. Rule 16(c) prescribes the method of affixing the papers slip over the sample bottle which should be from bottom to top of the container. However, from the evidence on record it is clear that this procedure was not carried out by the Complainant P.W.2 Shri. Prakash Halmanyar. So also the

complainant has not complied with mandatory duty as imposed under Section 11(1)(c)(i) of the Prevention of Food Adulteration Act i.e. giving intimation to the Local Health Authority. All these facts have been taken into consideration by the learned Magistrate while acquitting the respondents.

7. While acquitting the respondents, the learned Magistrate has also relied on the judgment of this Court **(Nagpur bench) reported in F.A.C. 1985 Vol.II page 88,** wherein it is observed that the Public Analyst's report must show :

> "Whether the adulterated sample is injurious to public health or not".

. It is further observed that otherwise such type of report is treated vague and defective and it cannot be made the base of conviction. The report of the Public Analyst (Exh.P-9) is silent in this regard. Looking to the evidence on record, it cannot be said that the learned Magistrate erred in taking such a view.

8. The view taken by the learned Magistrate while acquitting the respondents is a reasonable and

possible view. It is well settled that if the view of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C. Anthony Vs. K.G. Raghavan Nair).** In the case of **C. Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

9. Taking all these facts into consideration, the conclusion arrived at by the learned Magistrate that the prosecution has not proved its case, is a possible and reasonable view, hence, no case is made out for interference. Criminal appeal is dismissed. The appellants are on bail, their bail bonds stand cancelled.